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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,199	10/10/2001	Bangalore Eahwar Amita Rani	056859-0131	4508

22428 7590 08/01/2005

FOLEY AND LARDNER
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EXAMINER	
HUYNH, PHUONG N	
ART UNIT	**PAPER NUMBER**
1644	

DATE MAILED: 08/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/973,199	Applicant(s) RANI ET AL.	
	Examiner Phuong Huynh	Art Unit 1644	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 June 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on *13 June 2005*. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: *NONE*.
   Claim(s) objected to: *NONE*.
   Claim(s) rejected: *1,2 and 5-15*.
   Claim(s) withdrawn from consideration: *NONE*.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see continuation sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

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Applicants' arguments filed 6/13/05 and declaration of Bangalore Eshwar Amita Rani filed 12/21/04 have been fully considered but are not found persuasive. Applicants' position is that there is no motivation or reasonable expectation of success in producing the claimed invention using the cited combined references. The '228 patent and the '272 patent teach making egg yolk antibodies against pathogens and antibodies are useful against pathogens only. Both references provides the same method of making antibodies from hen but the object of both references is different than that of the present invention and therefore these references do not provide proper motivation. The '272 patent teaches method of making egg yolk antibodies as diagnostic agent, treatment of pathological conditions and anti-venom. The '228 patent on the other hand identifies the application of the antibodies against intestinal parasitosis. Therefore, none of the references provide motivation for combination with Beasely.

In response to applicant's arguments that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See In re Fine 5 USPQ2d 1596 (Fed. Cir 1988) and In re Jones 21 USPQ2d 1941 (Fed. Cir. 1992). In this case the teachings of the '228 patent and the '272 patent pertaining to the advantages of making antibody from egg yolks to any antigen and the teachings of Beasley et al indicating the success of making hapten protein conjugate as immunogen to make antibody to small molecule organo chlorine pesticides would have led one of ordinary skill in the art at the time the invention was made to combine the references to make egg yolk antibodies instead of rabbit antibodies that bind to small molecule organo chlorine pesticides. One having ordinary skill in the art would have been motivated with the expectation of success to substitute the immunogen as taught by the '228 patent or the '272 patent for the small molecule organo chlorine pesticides as taught by Beasley et al because antibodies from egg yolks of hyperimmunized hens provides a continuous source of large quantities of antibodies that can be easily collected and store as taught by the '228 patent and egg yolk antibody is comparatively easy to raise and keep chicken under conditions where they will produce antibody against the antigen of interest over a long periods of time as taught by the '272 patent (see col. 4, lines 45-50, in particular). The strongest rationale for combining reference is a recognition, expressly or implicitly in the prior art or drawn from a convincing line of reasoning based on established scientific principles or legal precedent that some advantage or expected beneficial result would have been produced by their combination In re Sernaker 17 USPQ 1, 5-6 (Fed. Cir. 1983) see MPEP 2144.

With respect to the argument on page 3 that antibodies raised in rabbit as taught by Beasley and McAdam cannot be similar to antibodies raises from a egg laying bird, the '272 patent and the '228 patent both teach a process of making antibodies from an egg laying bird. The bird antibody of the combined teachings of the '272 patent, the '228 patent and Beasley obviously has the same phylogenic origin as the claimed antibody produced by the claimed method. The molecular weight of IgY is irrelevant to the claimed invention.

With respect to the argument of immunogenicity of the antigen where trichlorobenzene hapten conjugated to ovalbumin as taught by Beasley is best to raise antibody in rabbit but not in hen because poultry eggs have ovalbumin and the hen would have self antibodies against ovalbumin and thus BSA conjugated to hapten is better for raising antibodies in chicken, it is noted that applicant arguing limitations which are not claimed. None of the claims recite immunizing the bird with **BSA** conjugated to the specific pesticide. Further, the binding specificity of the harvested antibodies in the claimed method is to any small molecule organ chlorine pesticides. Given the antigen used to immunize chicken in the claimed method is the same antigen as that of the Beasley et al, the method steps of raising antibodies in chicken is the same method steps as taught by the '228 patent or the '272 patent, the antibodies produced by the claimed process is the same antibodies produced by the process taught in the combined teachings of the references.

All rejections remain.

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